

These are the tentative rulings for civil law and motion matters set for Tuesday, July 23, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, July 22, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY **THE HONORABLE MICHAEL W. JONES** AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0029179 Debt Recovery, Inc. vs. Eddlemon, Erlinda C.

Defendant Erlinda Eddlemon's Motion to Set Aside Default and Default Judgment is denied without prejudice. There is no proof of service in the court's file indicating that the motion was ever served on plaintiff.

2. M-CV-0053437 Western States Glass Corp. vs. Daleuski, John David

Plaintiff and judgment creditor Western States Glass Corporation of Northern California's ("Western's") Motion for Order (1) Assigning Judgment Debtor's Rights to Payment; (2) Turnover Order; (3) Extending Lien on Debtor's Personal Property; and (4) Awarding Attorney's Fees is granted in part, and denied in part.

Pursuant to Code of Civil Procedure section 708.510, defendant and judgment debtor John David Daleuski, dba Daleuski's Custom Glass's ("Daleuski's") rights to any and all payments due or to become due to Daleuski from any third party, to the extent such payments are not otherwise exempt, are hereby assigned to Western, until such time as judgment in this action is satisfied. Western's request for a turnover order pursuant to Code of Civil Procedure section 699.040 is denied, as there is no indication that a writ of execution has issued. Code Civ. Proc. § 699.040(a). Western's request to extend the lien on Daleuski's personal property is denied without prejudice. The lien on Daleuski's personal property created by personal service of the Order for Examination lasts for one year from the date of service. In this case, the lien will expire on May 1, 2014, and there is no showing of a need to extend the lien beyond that date at this time. Finally, Western's request for attorneys' fees in the amount of \$1,000 is granted pursuant to Code of Civil Procedure section 685.040.

If oral argument is requested, Western's request for telephonic appearance is granted. Effective July 1, 2013, all telephonic appearances must be arranged through CourtCall. See Local Rule 20.8.A.2.

3. S-CV-0022459 Ryan, Don vs. Board of Directors -Foresthill Public Utility

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, it shall be heard on July 23, 2013 at 8:30 a.m. in Department 42.

Respondent's unopposed Motion to Dismiss for Failure to Bring Action to Trial Within Five Years is granted.

A trial court has "limited, inherent discretionary power to dismiss claims with prejudice." (*Lyons v. Wickhorst* (1986) 42 Cal.3d 911, 915.) A court may exercise its inherent power to dismiss where plaintiff has failed to prosecute the action diligently. (*Lyons v. Wickhorst, supra*, 42 Cal.3d at 915; *Wells Fargo Bank v. Goldzband* (1997) 53 Cal.App.4th 596, 628.) Code of Civil Procedure section 583.360, which mandates dismissal for the failure to bring an action to trial within five years, generally applies only to civil actions. (*Code Civ. Proc.* § 583.120(a).) "The judicial remedy of mandamus is not a civil action, but a special proceeding of a civil nature, which is available for specified purposes and for which the code provides a separate procedure." (*Wenzler v. Municipal Court* (1965) 235 Cal.App.2d 128, 131-132.) Nevertheless, "the court may, by rule or otherwise under inherent authority of the court, apply this chapter to a special proceeding ... except to the extent such application would be inconsistent with the character of the special proceeding or the statute governing the special proceeding." (*Code Civ. Proc.* § 583.120(b).) Appellate courts have found that discretionary dismissal statutes (*Code Civ. Proc.* §§ 583.110 *et seq.*) are applicable to mandamus proceedings, unless such application would permit, rather than prevent, delay. (*Oskooi v. Fountain Valley Regional Hosp. & Med. Center* (1996) 42 Cal.App.4th 233, 238-239; *Binyon v. State of Cal.* (1993) 17 Cal.App.4th 952, 956.)

There is no indication in the governing statutes or applicable case law that application of the mandatory five-year dismissal statute to a case brought under the California Environmental Quality Act ("CEQA") would be inconsistent with the character of a CEQA proceeding or the statutes governing such a proceeding. Public Resources Code section 21167.4 authorizes dismissal if petitioner does not request a hearing within 90 days of filing of the petition. In this case, petitioner did request a hearing within 90 days of filing of the petition, on April 18, 2008, but subsequently informed the court that the Master Plan upon which the petition was based had been rescinded, that the court should not schedule a status conference, and that the matter would likely be settled or dismissed within 30 days. Yet no further action has been taken in this case since that time. Code of Civil Procedure section 583.360 does not conflict with any other statute applicable to CEQA proceedings permitting dismissal for the failure to bring the action to trial. This action was filed on February 14, 2008, and shall be dismissed based on petitioner's failure to bring the case to trial within five years of commencement. (*Code Civ. Proc.* §§ 583.310; 583.360(a).)

Alternatively, the action should also be dismissed on the grounds that it is moot. The causes of action pled in this action allege that respondents approved the subject Master Plan in violation of CEQA, that respondent's approval of the Master Plan was a prejudicial abuse of discretion, and that declaratory relief is appropriate establishing that adoption of the Master Plan was a void act, and that the Master Plan is not exempt from CEQA review. (*Complt.*, ¶¶ 11-22.)

The Master Plan upon which the action was based was rescinded in March 2008. (*Robinson decl.*, ¶ 2, *Exh. A.*) Mandamus does not lie to compel that which has been done voluntarily. (*Bruce v. Gregory* (1967) 65 Cal.2d 666, 671; *see also Env't Protection Info. Center v. State Board of Forestry* (1993) 20 Cal.App.4th 27.) Given the rescission of the Master Plan, the petition fails to assert any actual controversy between the parties upon which judgment may be entered. (*See Coalition for a Sustainable Future in Yucaipa v. City of Yucaipa* (2011) 198 Cal.App.4th 939, 941.)

4. S-CV-0025503 Espinoza, Alejandro vs. Squaw Creek Transp. Inc, et al

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, it shall be heard on July 23, 2013 at 8:30 a.m. in Department 42.

Defendant Robert Leone's Motion to Reopen Limited Discovery as to Plaintiff Torres is granted in part, and denied in part. As a preliminary matter, defendant adequately met and conferred with plaintiff prior to filing the instant motion, as evidenced by counsel for defendant's May 28, 2013 letter requesting the parties agree to limited reopening of discovery, and counsel for plaintiff's May 30, 2013 e-mail response: "I will not be stipulating to any additional discovery."

In assessing a motion to reopen discovery, the court must analyze particular factors, including: (1) the necessity and the reasons for the discovery; (2) the diligence or lack of diligence of the party seeking the discovery or the hearing of a discovery motion, and the reasons that the discovery was not completed or that the discovery motion was not heard earlier; (3) any likelihood that permitting the discovery or hearing the discovery motion will prevent the case from going to trial on the date set, or otherwise interfere with the trial calendar, or result in prejudice to any other party; and (4) the length of time that has elapsed between any date previously set, and the date presently set, for trial of the action. (*Code Civ. Proc.* § 2024.050(b); *Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165 Cal.App.4th 1568, 1586-1588.)

Plaintiff Maribel Torres ("Torres") did not disclose, until months after the discovery cut-off date, that she was born with an entirely different name, Natalia Amayo Abraham, which name she used until 2007. Torres also provided an incorrect birth date in response to discovery responses, and only served amended responses correcting her name and birth date information days prior to this motion being filed. Torres' recent revelations regarding her identity provide good cause to permit defendants to reopen discovery to obtain information regarding Torres' identity and medical history. Further, defendants shall be permitted to obtain discovery regarding additional medical care or treatment of Torres after the discovery cut-off date as requested. Defendants are not required to rely solely on counsel's representation regarding treatment received by plaintiff.

To the extent defendant moves for further responses to Request for Production of Documents, Set Two, the motion is denied. Torres' response to these requests was served on July 30, 2012. Although defendant met and conferred regarding the adequacy of these responses shortly after receipt, there does not appear to have been any agreed upon extension of the

deadline to compel further responses pursuant to Code of Civil Procedure section 2031.310(c). Accordingly, defendant waived the right to compel any further response to Request for Production of Documents, Set Two. (*Code Civ. Proc. § 2031.310(c).*)

Plaintiff's request for sanctions is denied. If oral argument is requested, defendants' request for telephonic appearance is granted. Effective July 1, 2013, all telephonic appearances must be arranged through CourtCall. See Local Rule 20.8.A.2.

5. S-CV-0027875 Trujillo, Rudy, et al vs. Tri City Storage LLC, et al

Plaintiff's unopposed Motion for Trial Preference is granted. Preference in trial setting for a party who is over 70 years of age is permitted where the court finds that the moving party has a substantial interest in the action, and the health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation. Code Civ. Proc. § 36(a). In this case, plaintiff Rudy Trujillo is 88 years old, and suffers from health concerns which warrant preferential trial setting.

The current trial date set in this action is September 30, 2013. Any continuances of this trial date shall be subject to the requirements of Code of Civil Procedure section 36(f).

6. S-CV-0028737 Hopkins, Toni Lee vs. Cayton-Sutherland, Robin D., et al

Defendant Robin Cayton's Motion for Protective Order is granted in part, and denied in part. Pursuant to the Civil Code section 3295(c), and by order of the court, plaintiff is entitled to obtain discovery relating to defendant Robin Cayton-Sutherland's financial condition. However, plaintiff's ability to discover information relating to defendant's financial condition does not amount to unfettered access, and must be reasonably tailored in light of the purpose of the statute.

Defendant's request that Special Interrogatories, Set 2, and Request for Production of Documents, Set 2, be withdrawn in their entirety is denied. Defendant's request that she be permitted to submit a financial statement to the court under seal in lieu of responding to discovery is also denied. Nevertheless, the court finds that a protective order is warranted as to many of the interrogatories and requests at issue, as they are overbroad and unnecessarily intrusive.

Defendant's request for a protective order is granted as to Special Interrogatory Nos. 1, 11, 12, 18-24, 29-35, 37-52, 57-68, 70, and 73-75. With respect to Special Interrogatory No. 3, defendant shall not be required to provide "full details of any contract of employment." With respect to Special Interrogatory No. 69, defendant shall not be required to provide the telephone number of every financial institution, or the account number of every account. With respect to Special Interrogatory No. 72, defendant shall not be required to provide the account number of every account. Defendant must otherwise fully and completely respond to the remaining interrogatories.

Defendant's request for a protective order is granted as to Request for Production Nos. 1-14, 16-19, 22, 25 and 26. With respect to Request for Production No. 20, defendant shall only be required to produce the most recent account statements for each account. Defendant must otherwise fully and completely respond to the remaining requests.

Defendant's responses to the above-referenced discovery requests shall be served by August 13, 2013. The parties' respective requests for sanctions are denied.

If oral argument is requested, plaintiff's request for telephonic appearance is granted. Effective July 1, 2013, all telephonic appearances must be arranged through CourtCall. See Local Rule 20.8.A.2.

7. S-CV-0029097 Pique, Bridget vs. Sutter Pediatrics Roseville, et al

Defendants' Motion to Continue Settlement Conference and Trial Dates is granted. Good cause exists to continue the trial date pursuant to California Rules of Court, rule 3.1332(c), due to unavailability of trial counsel for all parties.

The trial date, mandatory settlement conference, and civil trial conference are hereby vacated. A case management conference is set for September 3, 2013 at 10:00 a.m. in Department 40.

If oral argument is requested, plaintiff's request for telephonic appearance is granted. Effective July 1, 2013, all telephonic appearances must be arranged through CourtCall. See Local Rule 20.8.A.2.

8. S-CV-0029335 Venu at Galleria Homeowners Assoc. vs. Villas at Galleria

Cross-defendant and cross-complainant H&D Electric, Inc.'s ("H&D's") Motion for Judgment on the Pleadings is denied. Pursuant to Civil Code section 2782, a provision, clause, covenant or agreement contained in a construction contract which purports to indemnify a party for that party's sole negligence or willful misconduct is void as against public policy. However, Civil Code section 2782 does not prohibit agreements for indemnification when the loss or injury is due only in part to the indemnitee's negligence or willful misconduct. *Smoketree-Lake Murray v. Mills Concrete Construction Co.* (1991) 234 Cal.App.3d 1724, 1738; *C.I. Engineers & Constructors, Inc. v. Johnson & Turner Painting Co.* (1983) 140 Cal.App.3d 1011, 1018.

Defendants and cross-complainants ("Developers") agree that provisions of the subject contract which purport to indemnify them for their sole negligence are void and unenforceable. However, there is no support for the contention that other general indemnity provisions providing for indemnity in case of H&D's sole or partial negligence, as alleged by Developers, must also be declared void under Civil Code section 2782. Developers' eighth, tenth, eleventh and twelfth causes of action adequately allege valid claims against H&D.

9. S-CV-0031153 Khan, Mohamed, et al vs. Bianchi, Paul J., Jr., et al

The Motion to Compel Discovery is dropped. No moving papers were filed.

10. S-CV-0031317 Tina Marie Gomez Executor of The Estate vs. Langle, Gerald

The Motion to Dissolve Preliminary Injunction and Motion for Judgment on the Pleadings are continued to July 30, 2013 at 8:30 a.m. in Department 40.

11. S-CV-0031353 Garcia, Camille, et al vs. Withrow, Charles, et al

The Petition to Approve Compromise of Disputed Claim of minor Camille Garcia is granted. If oral argument is requested, appearance of the minor is excused.

12. S-CV-0031547 Blix, Jonathan, et al vs. Schug, Jacob John, et al

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, such argument shall be held at 8:30 a.m. in Department 42:

Defendants Papola Enterprises, Inc. dba Network Real Estate (Network) and Pamela Auld's (Auld) Motion for Good Faith Settlement and Dismissal of Schug Cross-Complaint

Defendants' request as to the good faith settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasors' proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of Code of Civil Procedure section 877.6.

As to the request for dismissal of the Schugs' cross-complaint, the court notes that the current motion is unopposed by the Schugs. In light of the court's aforementioned ruling granting the good faith settlement, the court dismisses the Schugs' cross-complaint as to cross-defendants Network and Auld pursuant to Code of Civil Procedure section 877.6(c).

Defendants Coldwell Banker Grass Roots Realty (Coldwell Banker) and Mary Powell's (Powell) Motion for Good Faith Settlement

Defendants' motion is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasors' proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of Code of Civil Procedure section 877.6.

Defendant Quick Response Sewer and Drain's (Quick Response) Motion for Good Faith Settlement

Defendant's request as to the good faith settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue

is within the reasonable range of the settling tortfeasor's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of Code of Civil Procedure section 877.6.

As to the request for dismissal of the Schugs' cross-complaint, the court notes that the current motion is unopposed by the Schugs. In light of the court's aforementioned ruling granting the good faith settlement, the court dismisses the Schugs' cross-complaint as to cross-defendant Quick Response pursuant to Code of Civil Procedure section 877.6(c).

13. S-CV-0031757 Carter, Ronald vs. General Motors Corp. et al

Defendant General Motors, LLC's ("GM's") Motion for Summary Judgment or Alternative Motion for Summary Adjudication is granted.

The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. If the moving party carries this burden, the opposing party is then subject to its own burden of production to make a prima facie showing that a triable issue of material fact exists. *Id.* The trial court shall grant a motion for summary judgment if "all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Code Civ. Proc. §437c(c).

GM has satisfied its burden of establishing a complete defense to plaintiff's action. The separate statement sets forth evidence establishing that for each alleged defect in the vehicle, GM either repaired the defect to plaintiff's satisfaction, was prevented from diagnosing and repairing the defect by plaintiff, or was not obligated to by warranty perform any repair. (GM SSUF 1-15.) The burden thus shifts to plaintiff to make a prima facie showing that a triable issue of material fact exists. As GM's motion was unopposed, plaintiff failed to satisfy his burden. The evidence submitted by GM shows that there is no triable issue as to any material fact, and GM is entitled to judgment as a matter of law.

If oral argument is requested, GM's request for telephonic appearance is granted. Effective July 1, 2013, all telephonic appearances must be arranged through CourtCall. See Local Rule 20.8.A.2.

14. S-CV-0031781 Wilson, Edwin vs. Food Service Insurance Managers, Inc

The Motion to Amend Complaint was continued to July 30, 2013 at 8:30 a.m. in Department 40.

15. S-CV-0032143 Hanna, Nancy vs. Von Housen's Motors

Plaintiff's Motion to Compel Further Responses to Discovery is granted in part, and denied in part.

Plaintiff states that defendant served unverified responses to Form Interrogatories, Request for Production of Documents, and Request for Admissions on February 12, 2013. Plaintiff also states that defendant served unverified amended responses to Request for Production of Documents and Request for Admissions on May 18, 2013. Defendant provides no evidence showing that verifications to the discovery responses were ever served. Unverified responses are tantamount to no response at all. *Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636; *Steven M. Garber & Assoc. v. Eskandarian* (2007) 150 Cal. App. 4th 813, 817, fn. 4. As there is no indication that defendant's responses to discovery were verified, the 45-day deadline to compel further responses to discovery did not begin to run, and plaintiff's motion is timely.

Plaintiff's motion is granted with respect to Request for Production, Nos. 47-49, and Form Interrogatory No. 17.1, as it relates to Request for Admission, Nos. 23 and 24. Such requests are not overbroad, and are reasonably calculated to lead to the discovery of evidence relevant to plaintiff's claims or defendant's defenses in this action. The motion is denied with respect to Request for Production, Nos. 38, 46 and 59. These requests are unreasonably overbroad and burdensome. As phrased, they demand production of documents far exceeding the scope of the claims and parties in this litigation.

Plaintiff's request for sanctions is denied. The notice of motion fails to cite the appropriate legal authority for the request for sanctions as required. Code Civ. Proc. § 2023.040; Local Rule 20.2.4(E). Further, defendant was reasonably justified in opposing the motion with respect to at least some of the requests. Code Civ. Proc. § 2031.310(d).

Defendant shall serve verified further responses to the discovery requests noted above by no later than August 13, 2013.

If oral argument is requested, plaintiff's request for telephonic appearance is granted. Effective July 1, 2013, all telephonic appearances must be arranged through CourtCall. See Local Rule 20.8.A.2.

16. S-CV-0032151 Wertenberger, Melanie E., et al vs. Cambra, Georgia R., et al

The Motion to Set Aside Default was continued to August 20, 2013 8:30 a.m. in Department 40.

17. S-CV-0032771 Wagenhals, Constance N. vs. Gibbons, Phillip E.

The Demurrer to the Complaint is continued to July 30, 2013 at 8:30 a.m. in Department 40.

18. S-CV-0032911 Wells Fargo Advisors, LLC vs. Obenchain, Christopher

The Petition of Wells Fargo Advisors, LLC to Confirm Contractual Arbitration Award is granted. Judgment in favor of petitioner and against respondent Christopher Obenchain is confirmed in the amount of: \$193,127.41 in compensatory damages; \$18,904.36 in accrued

interest; \$6,905.50 in attorneys' fees; and \$5,207.36 in costs. Post-judgment interest shall accrue at the rate of 7% per annum from September 7, 2012 until satisfaction of judgment. Petitioner is also awarded attorneys' fees in the amount of \$1,673 incurred in filing the instant petition. Costs in the amount of \$2.87 are not recoverable. Civ. Code § 1033.5(b)(3).

19. S-CV-0032957 Christensen, Anker J. vs. Roseville Joint Un. High Sch. Dist

The Petition to Approve Disposition of Proceeds of Judgment of Person With a Disability is continued to August 13, 2013 at 8:30 a.m. in Department 40.

This matter was previously continued due to defects in service, and the terms of the special needs trust. Although defects with the terms of the special needs trust were appropriately addressed, petitioner still fails to comply with Probate Code section 1460(b)(1) and (2), as there is no proof of service indicating that notice of time and place of the hearing was provided at least 15 days prior to the hearing date to all conservators of the conservatee, and the conservatee. The matter shall be continued to allow for proper service of notice of the continued time and place of the hearing in compliance with Probate Code sections 1460(b)(1) and (2), and 3602(f).

20. S-CV-0032967 Moore, Jerry vs. Jaab Pasta USA, LLC, et al

The Demurrer to the Complaint is dropped. A first amended complaint has been filed.

These are the tentative rulings for civil law and motion matters set for Tuesday, July 23, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, July 22, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.